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STATE FOR EUR/WE, S/CT, AND S/WCI

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TAGS: [PGOV](#) [PREL](#) [FR](#) [PTER](#) [KJUS](#)

SUBJECT: TWO EX-GTMO DETAINEES CHARGED WITH TERRORIST
CONSPIRACY BUT ONE ORDERED RELEASED ON BAIL

REF: A. PARIS 1610

[1](#)B. KUJAWINSKI-FRANCE DESK 3/11 E-MAIL

Classified By: POLITICAL MINISTER-COUNSELOR JOSIAH ROSENBLATT, FOR REAS
ONS 1.4 B/D

[1](#)1. (S) Summary and comment: Ridouane Khalid and Khaled Ben Mustafa, two of the three ex-Guantanamo (GTMO) detainees returned to French custody on March 7, were formally placed under investigation on "terrorist conspiracy" charges March 11 by terrorism investigating judges Jean-Louis Bruguiere and Jean-Francois Ricard. Later that evening, a "liberty and detention" judge upheld the terrorism judges' request that Ben Mustafa be sent to pretrial detention. Curiously, a few hours later on March 12, the same "liberty and detention" judge examined Ridouane Khalid's case and ordered him released pending trial. It is highly likely that the office of the Paris Prosecutor will appeal the judge's decision, but for the time being Khalid remains released on bail. The Khalid decision is the first setback for Judges Bruguiere and Ricard as they work on the "French detainees in Guantanamo" dossier. For the first time in this dossier, a defense lawyer won a victory for his client, a fact that would embolden the lawyers for the other five detainees still in pretrial detention. When reached March 14, Ricard (strictly protect throughout) told Poloff that he was not optimistic regarding the dossier. He said the "liberty and detention" judge's decision could impact the continued detention of the other five detainees. End summary and comment.

[1](#)2. (S) Poloff spoke with Judges Bruguiere and Ricard on March 10 regarding the three ex-GTMO detainees returned to French custody on Monday, March 7. They confirmed that on March 11, they would charge Ridouane Khalid and Khaled Ben Mustafa with "terrorist conspiracy," which carries with it a maximum sentence of 10 years. They also revealed that the cases against the two would be more difficult than for the four original detainees returned to France in the summer of 2004. Bruguiere said that the DST had not uncovered any substantial additional information during the interrogation of Khalid and Ben Mustafa, which contrasts with the new information they had garnered from the original four detainees during their initial interrogation. Ricard confirmed this, and added that both Khalid and Ben Mustafa did not have substantial records of involvement in Afghanistan, in contrast to the original four. Regarding Ben Mustafa, Ricard said they had comparatively little information, due largely to the fact that Ben Mustafa had "barely enough time to set down his suitcase in Afghanistan before 9/11." The French have a little more on Khalid, but only because he was known to French services as being active in underground Islamist circles in Paris as far back as 1998. For these reasons, both judges said they personally considered the cases against Khalid and Ben Mustafa more difficult to prosecute.

[1](#)3. (S) Regarding the third detainee, Mustaq Ali Patel, Bruguiere confirmed March 10 that the French had no derogatory information against him, and for this reason, he was released on March 9 (reftel A). He also said that Patel has severe mental and physical problems, and Bruguiere believed these problems had been exacerbated during Patel's multi-year imprisonment in Guantanamo.

[1](#)4. (S) Following the formal announcement of an investigation, Khalid and Ben Mustafa were brought before a "liberty and detention" judge whose role is to determine whether or not the defendant should be released on bail pending the trial or remanded to pretrial detention. Ben Mustafa went first and the judge ruled in favor of Bruguiere and Ricard's requests that he be kept in pretrial detention. Khalid went before the same judge a few hours later and, surprisingly, given the similarity of the cases against the defendants, the judge ordered Khalid released pending trial. According to the Saturday (March 12) edition of Le Monde newspaper, the judge said Khalid's long detention in Guantanamo and the fact that the other five ex-GTMO detainees were in pretrial detention minimized Khalid's flight risk.

[1](#)5. (S) Judge Ricard's reaction March 14 reflected his surprise with the decision; "Don't ask me for explanations (for the judge's decision) because I don't have any. The (liberty and detention) judge's reasoning makes no sense."

Ricard said he had been unsure of the two cases against Khalid and Ben Mustafa, but expected nonetheless that the judge would either approve the detention of both or reject the detention of both. Ricard said there were few differences in the cases against Khalid and Ben Mustafa. However, he speculated that the following three issues may have influenced the judge to order Khalid's release: 1) Khalid's lawyer, Paul-Albert Iweins, is a former president of the Paris Bar and as such, is extremely skilled and reputable. This probably had a significant influence on the "liberty and detention" judge, said Ricard. 2) Khalid is hepatitis-C positive and this, combined with other more minor medical issues, may have decreased the judge's fear that Khalid was a flight risk; and 3) Khalid was less talkative during the DST's interrogation, said Ricard, which made compiling a dossier against him significantly more difficult.

16. (S) Moving forward, Ricard said it was probable that the Paris Prosecutor's office, upon recommendation of the terrorism investigating judges, would appeal Khalid's release this week. In addition, Ben Mustafa's lawyer has filed two separate appeals for his release, one of which will be heard this week, and the other shortly thereafter. Ricard said the appeals were based largely on the fact that the cases against Ben Mustafa and Khalid were similar. The lawyer will argue, said Ricard, that if Khalid was released, Ben Mustafa must be released as well. Ricard said that the other four ex-GTMO detainees in pretrial detention since summer 2004 would undoubtedly resubmit petitions for their release based on the success of Khalid's lawyer.

17. (S) Comment: In our dealings with Ricard and Bruguiere on the Guantanamo detainees issue, Ricard has consistently evinced more uncertainty and his reaction to this first setback demonstrates that. The fact that the "liberty and detention" judge allowed bail for one defendant and not the other suggests that incarceration in Guantanamo was not a decisive factor in deciding pretrial detention. Ricard and Bruguiere remain determined to pursue charges against six of the seven GTMO detainees, although there is little doubt that their defense lawyers will redouble their efforts to obtain bail for the other detainees as a result of the "liberty and detention" judge's decision. End comment.

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